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FREI PATENTANWALTSBUERO

FAX NO. 01 396 20 70

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Glotta		
Application No.: 09/750,009	Group Art Unit: 2145	<b>RECEIVED</b>
Filed: 12/27/2000	Examiner: T. Duong	<b>CENTRAL FAX CENTER</b>
Title: Scaleable Message System		<b>OCT 02 2005</b>
Attorney Docket No.: FREI.P-049		

I, Dr. Peter Walser, declare as follows:

1. I am the patent attorney that drafted US patent application No. 09/750,009 now pending before the United States Patent and Trademark Office. I am making this declaration of facts relating to the date of invention in this case because the inventor, Paul Giotta, is deceased based on facts within my personal knowledge and documents in the files of Frei Patentanwaltsbüro.
2. I am aware that the examiner has cited a reference US Pat. 6,802,067 to Camp et al., filed October 27, 2000 ("Camp") in rejection of the pending claims.
3. Attached as Exhibit A is a document titled "Highly Scaleable Multi-tier Message System" which is a true and correct representation of the contents of the file named "ClusterPatent.doc" from the file server at Frei Patentanwaltsbüro, where I work. I received this file from the deceased inventor, Paul Giotta, prior to writing the first draft of the patent application. The Drawings 1 through 4 at the end of the document are an integral part of the electronic MS Word version.
4. Attached as Exhibit B is a printout of a screen copy showing the information associated with the file "ClusterPatent.doc". This information shows that the file to have been last changed ("Geändert") on Sept. 19, 2000 by Paul Giotta, and last printed ("Gedruckt") on Sept. 19, 2000. (The entry "Geöffnet" shows the date July 7, 2005, on which the document was opened for the purpose of this proof).
5. Thus it is apparent that the document of Exhibit A was authored no later than Sept. 19, 2000.
6. Attached as Exhibit C is a printout titled "SCALEABLE MESSAGE SYSTEM". This is a draft for the subsequent patent application that I received from the inventor in December 2000. The draft includes change tracking marks. The header, as is standard practice at our office, includes the date which is automatically updated whenever the document is opened. Since change tracking in Microsoft Word was enabled, it is documented that two editing sessions took place on December 12 and December 8, 2000, and that the original version dates from October 6, 2000.

7. The unchanged portions of the document of Exhibit C therefore date from no later than October 6, 2000.

8. Attached as Exhibit D is a document titled "Proof of invention". The document of Exhibit C details the pending claims and shows how each element of claims 1-7 and claims 9-21 may be found in the documents of Exhibit A and/or Exhibit C.

From the foregoing it is apparent that the date of invention for the subject matter of the independent claims 1, 7, 13, 17, 20, 21 is no later than September 19, 2000.

9. Attached as Exhibit E is an e mail from me to Paul Giotta referencing the first draft of the application, and including questions relating to sections 4.2 to 4.11 of Exhibit A. This e mail is dated October 9, 2000

10. Attached as Exhibit F is an e mail from Paul Giotta to me in which he acknowledges receipt of the e mail of Exhibit E. This e mail is dated October 10, 2000.

11. Attached as Exhibit G is an e mail from me to Paul Giotta with a reminder requesting that he provide feedback on the draft. This e mail is dated November 23, 2000.

12. Attached as Exhibit H is a response from Paul Giotta dated November 28, 2000, in which he instructs me to continue with the preparation of the application.

13. Attached as Exhibit I is an e mail message from Paul Giotta to me, commenting on the updated application which was sent to him by me in the period between November 28, 2000 and December 8, 2000, the date of this e mail.

14. Attached as Exhibit J is an e mail dated December 13, 2000 from me to Paul Giotta enclosing a further revision of the application.

15. Attached as Exhibit K is an email dated December 17, 2000 responding to the e mail of Exhibit J and providing further comments on the application.

16. Attached as Exhibit L is a printout of e mails showing a transmission of a revised draft on December 19, 2000, and a resending of this e mail and a response on December 20, 2000.

17. Attached as Exhibit M is letter to US counsel instructing them to file the application in the United States. This letter is dated December 21, 2000, and the papers were sent by Federal Express.

18. Attached as Exhibit N is a debit note for the working out and filing of the application sent to Paul Giotta at Softwired Inc.. This debit note shows the date of the first meeting of Paul Giotta and me, September 19, 2000 ("..für Besprechung vom 19.9.2000"). On this meeting the invention was explained to me, which served as basis for the working out of the application.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both,


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under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Peter Walser

Zürich,

September 30, 2005